

MALAYAN UNITED FINANCE BHD.

v.

NOORMURNI SDN. BHD. & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR

VC GEORGE J

[CIVIL SUIT NO. C 83 OF 1984]

5 JULY 1985

CIVIL PROCEDURE: *Order 14 - Action by plaintiff for summary judgment under O. 14 on case with substantially similar facts to earlier O. 14 application which was dismissed - Whether subsequent application barred.*

The plaintiff above had failed to obtain summary judgment under O. 14 and the plaintiff, then consequently withdrew the action. Filed afresh on O. 14 against the same defendant for same cause or substantially the same cause. The defendants argued that the plaintiff could not do this.

Held:

The plaintiff in the instant case was barred from having the issue of whether it was entitled to summary judgment tried again. The O. 14 application is accordingly an abuse of the process of the Court and should have been dismissed.

[Appeal allowed with costs. Order made by Senior Assistant Registrar set aside. Defendants given unconditional leave to defend.]

Case referred to:

Carl-Zeiss-Stiftung v. Rayner etc. (No. 2) [1966] 2 All ER 536

For the defendants/appellants - Harcharan Singh; M/s. Azman, Davidson & Co.

For the plaintiff/respondent - Su Tiang Joo; M/s. Adnan Sundra & Low

JUDGMENT

VC George J:

Where a plaintiff having failed to obtain summary judgment under O. 14 has the action withdrawn with liberty to file the same afresh and does so against the same defendant for the same cause (or substantially the same cause), he is estopped from having another bite at the O. 14 cherry. The estoppel that arises has come to be known as “issue estoppel” and could arise even where a plea of *res judicata* cannot be established.

In *Carl-Zeiss-Stiftung v. Rayner etc. (No.2)* [1966] 2 All ER 536 at 565 Lord Guest said:

The requirements of issue estoppel still remain (i) that the same question has been decided; (ii) that the judicial decision which is said to create the estoppel was final, and (iii) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

In the instant case the issue of whether the plaintiff is entitled to summary judgment under O. 14 was tried in Kuala Lumpur High Court Civil Suit No: C 1129 of 1981 between the plaintiff who was also the plaintiff in that case against the 1st defendant who was also the defendant in that case in respect of the very same claims arising out of the very same transactions (save that there is an extra transaction of the same kind in the instant case).

- a* For the plaintiff it was argued that issue estoppel was not available because the summary judgment under O. 14 is not a final judgment. No doubt the giving of leave to defend cannot be said to be a final judgment but in respect of issue estoppel the question is not whether there is a judgment that is final but whether the issue that was adjudicated on was disposed of with finality. In Civil Suit No: C 1129 of 1981 the issue of whether the plaintiff was entitled to summary judgment was disposed of with finality in that the Senior Assistant Registrar concerned dismissed the application and the plaintiff did not appeal against the decision.
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Accordingly, in my judgment the plaintiff in the instant case is barred from having the issue of whether it is entitled to summary judgment tried again. The O. 14 application is accordingly an abuse of the process of Court and should have been dismissed.

- c* The appeal is allowed with costs. The order made by the Senior Assistant Registrar on the O. 14 application is set aside. The defendants are given unconditional leave to defend.

Also found at [1985] 2 CLJ 252

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